

## Press Release

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# Monsanto Paying \$80 Million Penalty for Accounting Violations

### **FOR IMMEDIATE RELEASE**

**2016-25**

*Washington D.C., Feb. 9, 2016* — The Securities and Exchange Commission today announced that St. Louis-based agribusiness Monsanto Company agreed to pay an \$80 million penalty and retain an independent compliance consultant to settle charges that it violated accounting rules and misstated company earnings as it pertained to its flagship product Roundup. Three accounting and sales executives also agreed to pay penalties to settle charges against them.

An SEC investigation found that Monsanto had insufficient internal accounting controls to properly account for millions of dollars in rebates offered to retailers and distributors of Roundup after generic competition had undercut Monsanto's prices and resulted in a significant loss of market share for the company. Monsanto booked substantial amounts of revenue resulting from sales incentivized by the rebate programs, but failed to recognize all of the related program costs at the same time. Therefore, Monsanto materially misstated its consolidated earnings in corporate filings during a three-year period.

"Financial reporting and disclosure cases continue to be a high priority for the Commission and these charges show that corporations must be truthful in their earnings releases to investors and have sufficient internal accounting controls in place to prevent misleading statements," said SEC Chair Mary Jo White. "This type of conduct, which fails to recognize expenses associated with rebates for a flagship product in the period in which they occurred, is the latest page from a well-worn playbook of accounting misstatements."

Andrew J. Ceresney, Director of the SEC's Division of Enforcement, added, "Improper revenue and expense recognition practices that obscure a company's true financial results have long been a focus of the Commission. We are committed to vigorously pursuing and punishing corporate executives and other individuals whose actions contribute to the filing of inaccurate financial statements and other securities law violations."

According to the SEC's order instituting a settled administrative proceeding against Monsanto, accounting executives Sara M. Brunnquell and Anthony P. Hartke, and then-sales executive Jonathan W. Nienas:

- Monsanto's sales force began telling U.S. retailers in 2009 that if they "maximized" their Roundup purchases in the fourth quarter they could participate in a new rebate program in 2010.
- Hartke developed and Brunnquell approved talking points for Monsanto's sales force to use when encouraging retailers to take advantage of the new rebate program and purchase significant amounts of Roundup in the fourth quarter of the company's 2009 fiscal year. Approximately one-third of its U.S. sales of Roundup for the year occurred during that quarter.
- Brunnquell and Hartke, both certified public accountants, knew or should have known that the sales force used this new rebate program to incentivize sales in 2009 and Generally Accepted Accounting Principles (GAAP) required the company to record in 2009 a portion of Monsanto's costs related to the rebate program. But Monsanto improperly delayed recording these costs until 2010.

- Monsanto also offered rebates to distributors who met agreed-upon volume targets. However, late in the fiscal year, Monsanto reversed approximately \$57.3 million of rebate costs that had been accrued under these agreements because certain distributors did not achieve their volume targets (at the urging of Monsanto).
- Monsanto then created a new rebate program to allow distributors to “earn back” the rebates they failed to attain in 2009 by meeting new targets in 2010.
- Under this new program, Monsanto paid \$44.5 million in rebates to its two largest distributors as part of side agreements arranged by Nienas, in which they were promised late in fiscal year 2009 that they would be paid the maximum rebate amounts regardless of target performance.
- Because the side agreements were reached in 2009, Monsanto was required under GAAP to record these rebates in 2009. But the company improperly deferred recording the rebate costs until 2010.
- Monsanto repeated the program the following year and improperly accounted for \$48 million in rebate costs in 2011 that should have been recorded in 2010.
- Monsanto also improperly accounted for more than \$56 million in rebates in 2010 and 2011 in Canada, France, and Germany. They were booked as selling, general, and administrative (SG&A) expenses rather than rebates, which boosted gross profits from Roundup in those countries.

Scott W. Friegstad, Associate Director in the SEC’s Division of Enforcement, said, “Monsanto devised rebate programs that elevated form over substance, which led to the booking of substantial amounts of revenue without the recognition of associated costs. Public companies need to have robust systems in place to ensure that all of their transactions are recognized in the correct reporting period.”

Monsanto consented to the SEC’s order without admitting or denying the findings that it violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, the reporting provisions of Section 13(a) of the Securities Exchange Act of 1934 and underlying rules 12b-20, 13a-1, 13a-11, and 13a-13; the books-and-records provisions of Exchange Act Section 13(b)(2)(A); and the internal accounting control provisions of Exchange Act Section 13(b)(2)(B).

Brunnquell, Hartke, and Nienas also consented to the order without admitting or denying the findings that they violated Rule 13b2-1 and caused Monsanto’s violations of various provisions. Nienas also was found to have violated Exchange Act Section 13(b)(5). Brunnquell, Nienas, and Hartke must pay penalties of \$55,000, \$50,000, and \$30,000 respectively, and Brunnquell and Hartke agreed to be suspended from appearing and practicing before the SEC as an accountant, which includes not participating in the financial reporting or audits of public companies. The SEC’s order permits Brunnquell to apply for reinstatement after two years, and Hartke is permitted to apply for reinstatement after one year.

The SEC’s investigation found no personal misconduct by Monsanto CEO Hugh Grant and former CFO Carl Casale, who reimbursed the company \$3,165,852 and \$728,843, respectively, for cash bonuses and certain stock awards they received during the period when the company committed accounting violations. Therefore, it wasn’t necessary for the SEC to pursue a clawback action under Section 304 of the Sarbanes-Oxley Act.

The SEC’s investigation was conducted by Antony Richard Petrilla, Darren E. Long, and Paul C. Gunson with assistance from Duane Thompson, Dwayne Brown, and Jan Folena. The investigation was supervised by Brian O. Quinn.

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## Related Materials

- [SEC order](#)